

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

IN THE MATTER OF:	)	Docket No. CAA-5-99-012
	)	
ELECTROLIZING CORP. OF OHIO	)	Proceeding to Assess an
Cleveland, Ohio	)	Administrative Penalty
	)	under Section 113(d) of the
	)	Clean Air Act,
Respondent.	)	42 U.S.C. § 7413(d)
_____	)	

Consent Agreement and Final Order

1. Complainant, the Director of the Air and Radiation Division, United States Environmental Protection Agency, Region 5 (EPA), brought this administrative action seeking a civil penalty under Section 113(d) of the Clean Air Act (the Act), 42 U.S.C. § 7413(d).

2. On April 14, 1999, EPA filed the complaint in this action against Respondent Electrolizing Corporation of Ohio ("Electrolizing"). The complaint alleges that Electrolizing violated Section 112 of the Act, 42 U.S.C. § 7412, and the general provisions of the National Emission Standards for Hazardous Air Pollutants (NESHAPs), 40 C.F.R. 63.8(c)(1), and the NESHAPs for Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks (Chrome NESHAPs), 40 C.F.R. 63.343(b)(1) at its facility in Cleveland, Ohio.

3. Electrolizing has not filed an answer under Section 113(d)(2) of the Act, 42 U.S.C. § 7413(d)(2) pursuant to the

Regional Judicial Officer's grant of extensions of time dated, May 20, 1999 and July 6, 1999.

4. Prior to July 1997, Electrolizing upgraded its water treatment facility and chrome plating operation through a series of environmental projects.

#### **Stipulations**

5. Electrolizing admits the jurisdictional allegations in the complaint and neither admits nor denies the factual allegations in the complaint.

6. Electrolizing waives its right to a hearing pursuant to 40 C.F.R. § 22.15(c), and waives its right to appeal pursuant to Section 113(d) of the Act, 42 U.S.C. § 7413(d).

7. Electrolizing certifies that it is complying fully with the general provisions of the NESHAPs and the Chrome NESHAPs, 40 C.F.R. Part 63, Subpart A and Subpart N.

8. The parties consent to the terms of this Consent Agreement and Final Order (CAFO).

9. The parties agree that settling this action without further litigation, upon the terms in this CAFO, is in the public interest.

#### **Civil Penalty**

10. In consideration of Respondent's degree of cooperation and Respondent's agreement to perform a supplemental

environmental project, EPA agrees to mitigate the proposed penalty of \$54,332.00 to \$11,000.

11. Electrolizing shall pay the \$11,000 civil penalty by cashier's or certified check payable to the "Treasurer, United States of America," within 30 calendar days after the effective date of this CAFO.

12. Electrolizing shall send the check to:

U.S. Environmental Protection Agency  
Region 5  
P.O. Box 70753  
Chicago, Illinois 60673

13. A transmittal letter, stating Respondent's name, complete address, the case docket number and the billing document number must accompany the payment. Respondent shall write the case docket number and the billing document number on the face of the check. Respondent shall send copies of the check and transmittal letter to:

Attn: Regional Hearing Clerk, (R-19J)  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Blvd.  
Chicago, Illinois 60604-3590

Attn: Compliance Tracker, (AE-17J)  
Air Enforcement and Compliance Assurance Branch  
Air and Radiation Division  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Blvd.  
Chicago, Illinois 60604-3590

Leslie A. Kirby, (C-14J)  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Blvd.  
Chicago, Illinois 60604-3509

14. This civil penalty is not deductible for federal tax purposes.

15. If Electrolizing violates this CAFO, EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, stipulated penalties and the United States' enforcement expenses for the collection action under Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

16. Interest shall accrue on any amount overdue from the date the payment was due at a rate established pursuant to 26 U.S.C. § 6621(a)(2). Electrolizing shall pay a \$15 handling charge each month that any portion of the penalty is more than 30 calendar days past due. Electrolizing shall pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue according to Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). This nonpayment penalty shall be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter.

#### **Supplemental Environmental Project**

17. Electrolizing shall complete a supplemental environmental project (SEP) designed to protect the environment through installation of a series of two automated triple counter flow rinses on all of Electrolizing's existing electroless nickel plating lines.

18. At it's Cleveland, Ohio facility, Electrolizing shall complete the SEP as follows:

a. Electrolizing shall complete the installation and begin operation of the two automated triple counter flow rinses within 90 calendar days after the effective date of this CAFO. See Attachment 1.

b. Electrolizing's two automated triple counter flow rinses shall capture at least 90% of the total nickel from Electrolizing's existing electroless nickel plating lines, and they shall reduce the total volume of F006 sludge from Electrolizing's existing electroless plating lines by at least 50%.

19. Electrolizing shall spend at least \$30,000 to purchase and install the SEP-related equipment, and \$108,000 within three years of installation to purchase proprietary chemicals needed for the SEP-related equipment.

20. Electrolizing shall use or operate the two automated triple counter flow rinses as part of its nickel plating operation for 3 years following installation.

21. Electrolizing certifies that it is not required to perform or develop the SEP by any law, regulation, grant, order, or agreement, or as injunctive relief as of the date it signs this CAFO. Electrolizing further certifies that it has not received, and is not negotiating to receive, credit for the SEP in any other enforcement action.

22. Electrolizing certifies that it did not begin installation of the project described in paragraph 18 before July 1999.

23. EPA may inspect the facility at any time to monitor Electrolizing's compliance with this CAFO's SEP requirements.

24. Electrolizing shall certify to EPA, in writing, (a) the cost and installation of the two automated triple counter flow rinses, within 15 calendar days of the date of completion of its installation; and (b) the cost of the proprietary chemicals purchased for the operation of the two automated triple counter flow rinses, annually for three years on the anniversary date that installation was completed. With each certification, Electrolizing shall provide supporting documentation, such as paid invoices, and bills which document the cost. Electrolizing shall provide a separate certification to EPA, in writing, within 15 calendar days of the date that the equipment specified in Paragraph 18, above, begins operating. Electrolizing shall submit annual reports to verify the percentage reduction of total nickel and F006 sludge from each of its existing electroless nickel plating lines, caused by the equipment specified in Paragraph 17, above.

25. Electrolizing shall submit a SEP completion report to EPA three years after the equipment specified in Paragraph 18, above, has been installed. This report shall contain the following information:

- a. detailed description of the SEP as completed;
- b. description of any operating problems and the actions taken to correct the problems;

c. itemized costs of goods and services used to complete the SEP documented by copies of invoices, purchase orders, or canceled checks that specifically identify and itemize the individual costs of the goods and services;

d. certification that Electrolizing has completed the SEP in compliance with this CAFO; and

e. description of the environmental benefits resulting from the SEP (quantify the benefits and pollution reductions).

26. Electrolizing shall submit all notices and reports required by this CAFO by first class mail or by overnight courier to:

Attn: Compliance Tracker (AE-17J)  
Air Enforcement and Compliance Assurance Branch  
Air and Radiation Division  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Blvd.  
Chicago, Illinois 60604-3590

27. In each report that Electrolizing submits pursuant to this CAFO, it shall certify that the report is true and complete by including the following statement signed by one of its officers:

I certify that I am familiar with the information in this document and that, based on my inquiry of those individuals responsible for obtaining the information, the information is true and complete to the best of my knowledge. I know that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

28. Following receipt of the SEP completion report described in paragraph 25 above, EPA shall notify Electrolizing in writing that:

- a. It has satisfactorily completed the SEP and the SEP report;
- b. There are deficiencies in the SEP as completed or in the SEP report and EPA will give Electrolizing 30 calendar days to correct the deficiencies; or
- c. It has not satisfactorily completed the SEP or the SEP report and EPA will seek stipulated penalties under paragraph 30.

29. If EPA exercises option b. above, Electrolizing may object in writing to the deficiency notice within 10 calendar days of receiving the notice. The parties shall have 30 calendar days from EPA's receipt of Electrolizing's objection to reach an agreement. If the parties cannot reach an agreement, EPA shall give Electrolizing a written decision on its objection. Electrolizing shall comply with any requirements that EPA imposes in its decision. If Electrolizing does not complete the SEP as required by EPA's decision, Electrolizing shall pay stipulated penalties to the United States under paragraph 30 below.

30. If Electrolizing violates any requirement of this CAFO relating to the SEP, it shall pay stipulated penalties to the United States as follows:

- a. Except as provided in subparagraph c. below, if Electrolizing did not complete the SEP satisfactorily pursuant to this CAFO, it shall pay a stipulated penalty of \$ 47,000.
- b. If Electrolizing began installation of the SEP prior to July 1999, it shall pay a stipulated penalty of \$ 47,000.
- c. If Electrolizing did not complete the SEP satisfactorily, but EPA determines that Electrolizing:



(i) made good faith and timely efforts to complete the SEP; and (ii) certified, with supporting documents, that it spent at least 90 percent of the required amount on the SEP, it shall not be liable for any stipulated penalty.

d. If Electrolizing satisfactorily completed the SEP, but spent less than 90 percent of the required amount on the SEP, it shall pay a stipulated penalty of \$7,000.

e. If Electrolizing failed to submit timely the SEP completion report required by paragraph 25 above, it shall pay a stipulated penalty of \$500 for each calendar day after the report was due until it submits the report.

f. If Electrolizing failed to submit timely any other report required by paragraph 24 above, it shall pay a stipulated penalty of \$500 for each calendar day after the report was due until it submits the report.

31. EPA's determinations of whether Electrolizing satisfactorily completed the SEP and whether it made good faith, timely efforts to complete the SEP shall bind Electrolizing.

32. Electrolizing shall pay the stipulated penalties within 15 calendar days of receiving EPA's written demand for the penalties. Electrolizing shall use the method of payment specified in paragraphs 11-13 above and it shall pay interest, handling charges, and nonpayment penalties on any overdue amounts.

33. Any public statement that Electrolizing makes referring to the SEP shall include the following language, "Electrolizing undertook this project under the settlement of the United States Environmental Protection Agency's enforcement action against

Electrolizing for violations of Section 112 of the Clean Air Act."

**Force Majeure**

34. If an event occurs which causes or may cause a delay in completing the SEP or delay in submitting a SEP related report as required by this CAFO:

- a. Electrolizing shall notify EPA in writing within 10 days after learning of an event which caused or may cause a delay in completing the SEP. The notice shall describe the anticipated length of the delay, its cause(s), Electrolizing's past and proposed actions to prevent or minimize the delay, and a schedule to carry out those actions. Electrolizing shall take all reasonable actions to avoid or minimize any delay. If Electrolizing fails to notify EPA according to this paragraph, Electrolizing shall not receive an extension of time to complete the SEP.
- b. If the parties agree that circumstances beyond the control of Electrolizing caused or may cause a delay in completing the SEP, the parties shall stipulate to an extension of time no longer than the period of delay.
- c. If EPA does not agree that circumstances beyond the control of Electrolizing caused or may cause a delay in completing the SEP, EPA shall notify Electrolizing in writing of its decision and any delays in completing the SEP shall not be excused.
- d. Electrolizing has the burden of proving that circumstances beyond its control caused or may cause a delay in completing the SEP. Increased costs for completing the SEP shall not be a basis for an extension of time under subparagraph b. above. Delay in achieving an interim step shall not necessarily justify or excuse delay in achieving subsequent steps.

**General Provisions**

35. This CAFO settles EPA's claims for civil penalties for the violations and allegations alleged in the complaint.

36. Nothing in this CAFO shall restrict EPA's authority to seek Electrolizing's compliance with the Act and other applicable laws and regulations.

37. This CAFO does not affect Electrolizing's responsibility to comply with the Act and other applicable federal, state and local laws and regulations.

38. This CAFO constitutes an "enforcement response" as that term is used in "U.S. EPA's Clean Air Act Stationary Source Civil Penalty Policy" to determine Electrolizing's "full compliance history" pursuant to Section 113(e) of the Act, 42 U.S.C. § 7413(e).

39. The terms of this CAFO bind Electrolizing, its officers, directors, agents, successors, authorized representatives, and assigns.

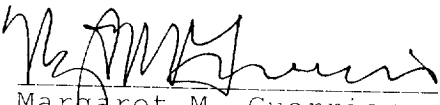
40. Each person signing this Consent Agreement certifies that he or she has the authority to sign this Consent Agreement for the party whom he or she represents and to bind that party to its terms.

41. Each party shall bear its own costs and fees in this action.

42. This CAFO constitutes the entire agreement between the parties.

**U.S. Environmental Protection  
Agency, Complainant**

Date: Sept. 23, 1999

By:   
Margaret M. Guerriero,  
Acting Director  
Air and Radiation Division  
U.S. Environmental Protection  
Agency, Region 5 (A-18J)

**Electrolizing Corporation of  
Ohio, Respondent**

Date: \_\_\_\_\_

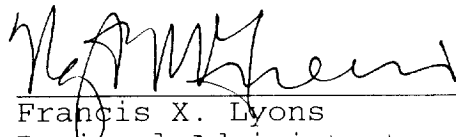
By:   
Scott Nobel, Vice President  
Electrolizing Corporation of Ohio

CONSENT AGREEMENT AND FINAL ORDER  
Electrolizing Corporation of Ohio  
Docket No. CAA-5-99-012

Final Order

It is ordered as agreed to by the parties and as stated in the Consent Agreement, effective immediately upon filing of this CAFO with the Regional Hearing Clerk. This Order disposes of the matter pursuant to 40 C.F.R. § 22.18(b).

Date: Sept. 24, 1999

  
for Francis X. Lyons  
Regional Administrator  
U.S. Environmental Protection  
Agency, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

CERTIFICATE OF SERVICE

I certify that I filed an original of the foregoing Consent Agreement and Consent Order (CACO) Assessing Administrative Civil Penalties Against United Hard Chrome Corporation, Docket No. 5-CAA-99-012, with the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, and have sent another original of the CACO to:

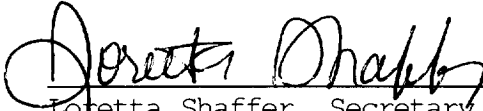
Lawrence Noble, President  
Electrolizing Corporation of Ohio  
1325 East 152nd Street  
P.O. Box 12007  
Cleveland, Ohio 44112

I also certify that copies of the CACO have been sent to:

Louis McMahon, Attorney  
Thompson, Hine and Flory, LLP  
3900 Key Center  
127 Public Square  
Cleveland, Ohio 44114-1216

Robert Hodanbosi, Chief  
Division of Air Pollution Control  
Ohio Environmental Protection Agency  
1600 Watermark Drive  
Columbus, Ohio 43215-1034

on the 28<sup>th</sup> day of September, 1999.

  
\_\_\_\_\_  
Loretta Shaffer, Secretary  
ARD/AECAB/AECAS (MN/OH)

Certified No. P140 777 341